IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.966 OF 2005
WITH
CIVIL APPLICATION NO.1220 OF 2005

M/s. Aroha Constructions and Developers Pvt. Ltd. ..Appellant.
Vs.
Maheshwari Charitable Foundation & anr. .. Respondents.

...

Mr. R.S. Apte for the Appellant.

CORAM : DR.D.Y.CHANDRACHUD, J.

21st November, 2005.

P.C. :

The suit came to be dismissed by the Trial Judge on two grounds; (i) non-joinder of all the trustees as Plaintiffs to the suit and (ii) a breach of the order of injunction. The Additional District Judge, Pune in first appeal noted that an application has been filed for the impleadment of all the trustees and in that view of the matter, it would not be appropriate to dismiss the suit without the application being heard and decided. In so far as the dismissal of the suit for breach of the order of injunction was concerned, the Appellate Court noted that it was the contention of the Plaintiffs that necessary arrangements have been made for appointing a security guard and affixing a board informing the public about the order of injunction of the Court. The Plaintiffs denied that they had

either parked any vehicles or allowed the parking of vehicles in breach of the order of injunction. The First Appellate Court was, in my view, justified in holding that an order of dismissal under Order 39 Rule 11 is a drastic order which should be passed only when a clear case is made out to the effect that there was a breach of an order of injunction of the Court. The order of the Appellate Court cannot be faulted because in the first instance the Court has held that it was appropriate that the application for impleadment of all the trustees should be disposed of and, in the second instance, that the entire suit should be heard and disposed of by recording evidence. The evidence to be recorded would also cover the question as to whether there was any breach of the order of injunction. In these circumstances, since the entire suit is at large pending trial before the Learned Trial Judge, it is not necessary to interfere in the exercise of the jurisdiction of this Court in an Appeal from Order. All issues and contentions of the parties will be determined at the trial. The Appeal from Order is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.